



January 23, 2015

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## SENATE BILL No. 38

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DIGEST OF SB 38 (Updated January 21, 2015 12:16 pm - DI 106)

**Citations Affected:** IC 34-7.

**Synopsis:** Application of foreign law. Provides that a court may not apply, enforce, or grant comity, res judicata, claim preclusion, or issue preclusion to a foreign law, ruling, or judgment if doing so would violate the fundamental liberties, rights, and privileges guaranteed by the Constitution of the United States or the Constitution of the State of Indiana. Provides that a provision in a contract or agreement: (1) that provides for the choice of foreign laws in its interpretation; or (2) that provides for the choice of venue or forum; and that would result in a violation of a fundamental liberty, right, or privilege guaranteed by the Constitution of the United States or the Constitution of the State of Indiana is void and unenforceable. Prohibits a court from granting certain motions if the transfer is likely to affect the constitutional rights of the nonmoving party. Provides that a court may not require or authorize any court to: (1) adjudicate or prohibit a religious organization from adjudicating ecclesiastical matters; or (2) determine or interpret the doctrine of a religious organization.

**Effective:** July 1, 2015.

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### Steele, Delph

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January 6, 2015, read first time and referred to Committee on Judiciary.  
January 22, 2015, amended, reported favorably — Do Pass.

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SB 38—LS 6100/DI 107





January 23, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE BILL No. 38

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-7-8 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2015]:

4 **Chapter 8. Application of Foreign Law**

5 **Sec. 1. This chapter does not apply to a corporation,**  
6 **partnership, limited liability company, or business association that**  
7 **contracts to subject itself to a foreign law in a jurisdiction other**  
8 **than Indiana or the United States.**

9 **Sec. 2. As used in this chapter, "court" includes any court,**  
10 **board, administrative agency, or other adjudicative authority in**  
11 **Indiana.**

12 **Sec. 3. As used in this chapter, "ecclesiastical matters" include:**  
13 **(1) the:**  
14 **(A) election;**  
15 **(B) appointment;**  
16 **(C) calling;**

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1 (D) discipline;  
 2 (E) dismissal;  
 3 (F) removal; or  
 4 (G) excommunication;  
 5 of a member, officer, official, priest, nun, imam, monk, pastor,  
 6 rabbi, or member of the clergy;  
 7 (2) the determination or interpretation of a doctrine; and  
 8 (3) the application and interpretation of the laws and rules;  
 9 of a religious organization.

10 Sec. 4. (a) As used in this chapter, "foreign law" means any law,  
 11 rule, legal code, or system:

12 (1) established; and  
 13 (2) used or applied;  
 14 in a jurisdiction outside the states of the United States, the District  
 15 of Columbia, or the territories of the United States.

16 (b) The term does not mean or include any laws of a Native  
 17 American tribe in Indiana.

18 Sec. 5. (a) As used in this chapter, "religious organization"  
 19 means any church, seminary, synagogue, temple, mosque, religious  
 20 order, religious corporation, religious association, or religious  
 21 society whose identity is distinctive in terms of a common religious  
 22 creed, beliefs, doctrines, practices, or rituals based on any faith or  
 23 denomination.

24 (b) The term includes a church or religious ministry that is a  
 25 religious organization exempt from federal income taxation under  
 26 Section 501(c)(3) or 501(d) of the Internal Revenue Code.

27 Sec. 6. A court may not apply, enforce, or grant comity, res  
 28 judicata, claim preclusion, or issue preclusion to a foreign law,  
 29 ruling, or judgment if doing so would violate the fundamental  
 30 liberties, rights, and privileges guaranteed by the Constitution of  
 31 the United States or the Constitution of the State of Indiana of the  
 32 person against whom the foreign law, ruling, or judgment is being  
 33 applied or enforced. The fundamental liberties, rights, and  
 34 privileges to which this section applies include due process,  
 35 freedom of religion, freedom of speech, and freedom of the press.

36 Sec. 7. If any contractual provision or agreement provides for  
 37 the choice of a foreign law to govern its interpretation or the  
 38 resolution of any dispute between parties, and if the foreign law  
 39 incorporates any substantive or procedural law that, as applied to  
 40 the dispute at issue, would not guarantee the parties the same  
 41 fundamental liberties, rights, and privileges guaranteed by the  
 42 Constitution of the United States and the Constitution of the State



of Indiana, the agreement or contractual provision shall be interpreted or construed to preserve the fundamental constitutional liberties, rights, and privileges of the parties. If the contractual provision or agreement is incapable of being modified or amended in order to preserve the fundamental liberties, rights, and privileges of the parties, the agreement or contractual provision is void and unenforceable.

Sec. 8. (a) If a contractual provision or agreement provides for the choice of venue or forum outside the United States, and if the jurisdiction chosen would likely apply any substantive or procedural foreign law to the dispute at issue that would not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the Constitution of the United States and the Constitution of the State of Indiana, that agreement or contractual provision is void and unenforceable.

(b) A court may not grant a motion of forum non conveniens or a motion to dismiss granting comity to a proceeding pending in a court outside the United States if the court finds that granting the motion violates, or would likely lead to the violation of, the fundamental liberties, rights, and privileges guaranteed under the Constitution of the United States or the Constitution of the State of Indiana of the nonmovant in a court outside the United States with respect to the matter in dispute.

Sec. 9. (a) A court may not interpret this chapter as requiring or authorizing any court to:

(1) adjudicate or prohibit any religious organization from adjudicating ecclesiastical matters if adjudication by a court would violate the prohibition of the establishment clause of the First Amendment to the Constitution of the United States or violate the Constitution of the State of Indiana; or

(2) determine or interpret doctrine of the religious organization.

(b) A court or arbitrator may not interpret this chapter as limiting the right of any person to the free exercise of religion as guaranteed by the First Amendment to the Constitution of the United States or by the Constitution of the State of Indiana.

(c) This chapter shall not be interpreted to conflict with any federal treaty or other international agreement entered into by the United States as a party to the extent that the treaty or international agreement preempts or is superior to state law on the matter at issue.



## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 38, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 6, delete "and".

Page 2, line 7, after "doctrine;" insert "**and**

**(3) the application and interpretation of the laws and rules;**".

and when so amended that said bill do pass.

(Reference is to SB 38 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 3.

